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IN THE SUPREME COURT OF THE STATE OF IDAHO

HON. LAWRENCE G. WASDEN, in his capacity as
Attorney General of Idaho, ex rel STATE
ENDOWMENT LAND BENEFICIARIES

Plaintiff-Appellant-Cross Respondent,

v.

STATE BOARD OF LAND COMMISSIONERS,
and GEORGE BACON, in his official capacity as
Director of the Idaho Department of Lands,

Defendants-Respondents-Cross Respondents,

and

GLADYS BABCOCK, et al.,

Defendants-In-Intervention-Respondents-
Cross Appellants

and

PRIEST LAKE STATE LESSEES ASSOCIATION,
INC.,

Defendant Intervenor-Respondent-Cross
Respondent.

GLADYS BABCOCK, as Trustee of the BABCOCK
TRUST, et al.,

Plaintiffs-Cross Appellants,

vs.

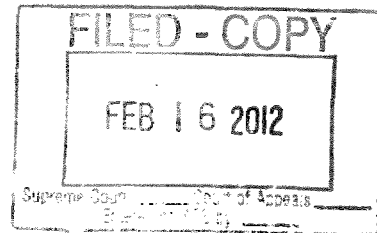
STATE BOARD OF LAND COMMISSIONERS,
and GEORGE BACON, in his official capacity as
Director of the Idaho Department of Lands,

Defendants-Cross Respondents.

Supreme Court Docket No. 39084-2011

Ada County Docket No. 2010-23751

Ref. No. 11-666



Valley County Docket No. 2010-436

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Ref. No. 11-666

Valley County Docket No. 2010-436

**CROSS-APPELLANTS' OPENING BRIEF RE: CROSS-APPEAL OF THE CONTRACT
CLAIMS**

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

HONORABLE MICHAEL R. MCLAUGHLIN, DISTRICT JUDGE, PRESIDING

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I. STATEMENT OF THE CASE

A. Nature of the Case

This matter arises from the lease of Idaho endowment lands by the Idaho Land Board to the leaseholders of 354 lots near Priest Lake and 168 lease holders near Payette Lake. This brief is presented on behalf of the Payette Lake Lessees (“Lessees”). The Lessees brought this action to enforce certain provisions of the lease agreement between Lessees and the Idaho Land Board.

B. Course of Proceedings Below¹

The Lessees filed this civil action in Valley County in order to protect and enforce certain contractual rights arising from the lease of state endowment lands.² Prior to the present action, the Attorney General filed a Writ of Prohibition with this Court seeking to prevent the Land Board from offering new leases to the state endowment leaseholders. This Court denied the Attorney General’s request, finding that other remedies exist through declaratory action for injunctive relief. *Wasden ex rel. State v. State Bd. of Land Comm’rs*, 150 Idaho 547, 549, 249 P.3d 346, 348 (2010). Immediately following this Court’s decision, the Attorney General filed an action in Ada County, challenging the constitutionality of Idaho Code § 58-310A. R. Addendum Vol., p. 22. The pending Valley County matter filed by Lessees was consolidated

¹ To prevent repetitiveness, a full detailed course of proceedings is provided in Cross-Appellants’ Response Brief, filed contemporaneously herewith.

² The presently appealed civil action is one of five matters filed by the Lessees. The Lessees have filed the civil action alleging claims for breach of contract, which has been consolidated with the Attorney General’s claims regarding the constitutionality of Idaho Code § 58-310A. This is the matter that is currently before the Court on appeal. In addition to the civil action, the Lessees have also filed four petitions for judicial review, which seek appellate review by the district court of the Land Board’s decisions.

with the Attorney General's subsequently filed action and both parties moved for summary judgment. R. Addendum Vol., p. 25. The district court granted summary judgment to the Land Board regarding the parties' cross-motions for summary judgment on the contract claims. R. Addendum Vol., p. 40. This appeal followed.

C. Statement of Facts

"The Idaho Department of Land is the executive agency established to administer State endowment lands." R. Addendum Vol., p. 23. The Land Board entered into leases with each of the Babcock Plaintiffs/Payette Lake Lessees concerning parcels of state endowment land near and around Payette Lake (also referred to as "the cottage site leases"). R. Addendum Vol., p. 23. The original leases were drafted by the Land Board for a ten year period beginning January 1, 2001 and ending on December 31, 2010. ("2001 Leases"). R. Addendum Vol., p. 23. Each Lessee or successor in interest in this matter agreed to the same lease terms. (Attached to this brief as "Exhibit A"). "The 2001 Leases provide for annual rent of 2.5% of the current fee simple value of the leased premises, adjusted annually based on the values determined by Valley County." R. Addendum Vol., p. 19. This lease further provides that upon sale of a leasehold, Lessees will pay to the Land Board 10% of any leasehold value³ realized from the sale. R. Exh. 1 at E.1.3.b. The Payette Lake Lessees brought this action to enforce their contractual right to renew and alleged that the Land Board breached its lease with the Lessees. R. Vol. I, p. 15.

³ Leasehold value is determined by subtracting the value of approved lease-owned improvements from the total sale price. R. Exh. 1 at E.1.3.b.

The Lessees request for renewal of the lease is based on the following lease provisions:

C. LEASE TERM/RENEWAL

1.1 Provided by Statute. The term of this lease shall be for no more than ten (10) years pursuant to Idaho Code (I.C.) § 58-307(1)⁴, and for the period of years as set forth in the attached cover lease. Renewals of the lease may be granted by the LESSOR as determined by the LESSOR at the LESSOR'S discretion pursuant to I.C. § 58-310A.⁵

R. Exh. 1 (also attached hereto as Exhibit A) (emphasis added). This right to renew is further addressed in section K.1.4.b, which limits the Land Board's discretion to renew by requiring that any request "shall not be unreasonably withheld." R. Exh. 1.

1.4.b. Upon Non-Renewal By Lessor. Should LESSEE apply to renew this lease in the manner provided by law and such application be denied, then LESSOR shall purchase the approved improvements placed or cause to be placed on the leased premises by LESSEE, at the fair market value of such improvements as of the effective date of the expiration. Fair market value of LESSEE improvements shall be established by appraisal. A request for renewal by the LESSEE shall not be unreasonably withheld.

R. Exh. 1 (emphasis added).

On March 16, 2010, the Land Board voted to increase the rent formula for new leases beginning January 1, 2011, from 2.5% of the appraised value to 4% of a ten-year average of the appraised value. R. Exh. 5, pp. 36-37. The increase from 2.5% to 4% will be phased in over a five year period. *Id.* The Payette Lake Lessees timely applied to renew the existing cottage site

⁴ Idaho Code § 58-307 has since been amended to permit thirty-five year lease terms, as opposed to the ten year limit that was in effect at the time the 2001 Leases were executed.

⁵ Idaho Code § 58-310A exempts cottage site leases from the conflict auction provision. The constitutionality of § 58-310A is the subject of part of this appeal, and has been separately briefed by the Lessees for the ease of the reader.

leases in a writing sent to the Department of Lands, thereby satisfying the legal requirements to renew their leases under the current terms, including the current rent provision. R. Vol. I, p. 102 ¶2. These applications for renewal expressly reserved the right to renew on the same terms as set forth in the existing lease pursuant to the current lease's renewal provision. *Id.* On March 31, 2010, the Department of Lands refused to recognize the Lessees renewal notices and stated that Lessees were required to fill out a renewal application created by the Department of Lands. R. Exh. 5. This application is not a requirement imposed by statute or by the lease. The Department also took the position that renewal was only available on the terms of the new lease and not pursuant to the terms of the current lease.

The March 31 letter enclosed what the Department called a "template lease." *Id.* The template was watermarked with the word "Template" across the front of each page, did not provide any identifying information specific to particular lessees, and did not contain a signature block. *See Id.* The Department also stated that it would contact the Lessees if any action were taken by the Land Board that would change the "template lease," thus indicating that the "template" was simply a draft and potentially subject to further revisions. *Id.* The Department further stated that in early fall it would send out lease documents for the new leases to those Lessees that returned the Department of Lands' form. *Id.* Out of an abundance of caution and not wanting to give the Department of Lands a reason to argue that the Lessees failed to timely

apply for renewal, the Lessees returned the Department of Lands' renewal form, reserving their rights to protest the imposition of a new lease on them. *See* R. Vol. I, p. 102.⁶

The Land Board met on December 21, 2010, immediately following the entry of a preliminary injunction entered at the Attorney General's request, and voted to offer existing Lessees a one-year lease under the current terms and conditions. R. Addendum Vol., p. 26. The Land Board also approved a ten year lease to be offered in 2012 at a rental rate of 4% of current market value. *Id.*

This action is brought because of the Land Board's refusal to grant the renewals of the 2001 leases and its unilateral imposition of a new lease with a new rent formula on the Lessees constitutes a breach of the 2001 Lease renewal provisions. It is the Lessees' position that the December 21 decision is evidence of the Board's rejection of the Lessees' request to renew the 2001 Lease. Lessees filed this action seeking specific performance of the terms of the 2001 Leases, including the continuation of the 2.5% rent formula, and alternatively seeking compensation under the leases' failure to renew provision, which allows for compensation for the fair market value of improvements made to the leased premises.

Lessees filed this lawsuit for breach of the lease. Both the issue of the contract claim and the constitutionality of Idaho Code § 58-310A are presently before the Court after the district court granted summary judgment for the Land Board regarding the contract claims and denied

⁶ This fact was stipulated to by the parties for purposes of the cross-motions for summary judgment.

the Attorney General's motion regarding the constitutional claims.⁷ The contract claim (Lessees as cross-appellants) and the constitutional claim (Lessees as respondents) have been briefed by the Lessees separately for the ease of the reader. This brief addresses the contract claim.

II. ISSUE PRESENTED ON APPEAL

Whether the district court erred in holding that the Lessees' breach of contract claim must be raised through a petition for judicial review under Idaho's Administrative Procedures Act.

III. ARGUMENT

A. Standard of Review

Summary judgment is appropriate when the pleadings, depositions, affidavits and admissions on file show that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. I.R.C.P. 56(c). All disputed facts must be liberally construed in favor of the nonmoving party, and all reasonable inferences that can be drawn from the record must be drawn in favor of the nonmoving party. *See Eagle Water Co., Inc. v. Roundy Pole Fence Co., Inc.*, 134 Idaho 626, 628, 7P.3d 1103, 1105 (2000). If the Court finds that reasonable minds could differ on the conclusions drawn from the evidence presented, the motion must be denied. *Wattenbarger v. A.G. Edwards & Sons, Inc.*, 150 Idaho 308, 315, 246 P.3d 961, 968 (2010).

This Court freely reviews statutory construction, which is a question of law. *Hayden Lake Fire Prot. Dist. v. Alcorn*, 141 Idaho 388, 398, 111 P.3d 73, 83 (2005) (overruled on other

⁷ The denial of the Attorney General's request for summary judgment is appealed to this Court pursuant to Rule 54(b) certification.

grounds). This “includes whether a statute provides for judicial review, and the standard of review to be applied if judicial review is available.” *Id.* at 400, 111 P.3d at 85.

B. The District Court Erred When it Found That Lessees Breach of Contract Claim is Limited to Review Under the Administrative Procedures Act

The district court found that the Lessees’ breach of contract claim against the Land Board should be reviewed under the Idaho Administrative Procedures Act (IDAPA or APA). R. Addendum Vol., p. 30. The basis of the court’s decision was that “[j]udicial review of agency action shall be governed by the provisions of [the APA] unless other provision of law is applicable to the particular matter.” R. Addendum Vol., pp. 30-31 (citing I.C. § 67-5270(1)) (stating that “the Land Board’s December 21, 2010 [decision] is subject to judicial review because it is an agency action that determined the rights of the cottage site Lessees.”). The district court relied on *Nation v. State, Dept. of Corrections*, and found that the Lessees must exhaust the administrative remedies under the APA because “the doctrine of exhaustion should also apply where a party may have both an administrative remedy under the APA and a claim for breach of contract.” R. Addendum Vol., p. 31 (citing *Nation v. State, Dept. of Corrections*, 144 Idaho 177, 193, 158 P.3d 953, 969 (2007)).

In *Nation*, the Court found that the parties’ tort claim for retaliation was closely tied to the parties’ employment claim, which was barred by the doctrine of exhaustion. *Nation*, 144 Idaho at 193, 158 P.3d at 969. The basis of this claim arose from an attack by a prisoner on three Department of Correction (“DOC”) employees. *Id.*, at 183, 158 P.3d at 959. The DOC employees alleged that the DOC improperly disclosed their personal information related to a

worker's compensation claim during the criminal investigation of the events that led to that claim. *Id.*, at 183-84, 158 P.3d at 959-60. In addition to claims for violations of § 1983 and state law claims for invasion of privacy, negligence, negligent infliction of emotional distress, and intentional infliction of emotional distress, two of the employees alleged that they were retaliated against for exercising their rights under state and federal law. *Id.* The Court found that the employees should have voiced their concerns through the administrative process prior to filing suit because "in employment actions tort claims must first be pursued through the administrative body." *Id.*, at 193, 158 P.3d at 969. It further found that although the plaintiffs had alleged a tort, the tort was directly related to the adverse employment action. *Id.*

Reliance on *Nation* is misplaced. First, there is no administrative remedy to exhaust prior to filing suit. Second, the present case does not arise from a dispute regarding agency action, but rather is a dispute seeking to enforce contractual rights with an agency. There is a clear distinction between a dispute regarding agency action and a dispute that arises with an agency. Obviously, when an agency breaches a lease it does so through some "action" or "inaction." However, that "action" or "inaction" does not restrict this matter to the confines of administrative review. The breach of contract claim in this instance is not closely related to the Land Board's December 21 decision, instead it is asserted to address the effect of the agency's "action" or "inaction," which breached the lease. The essence of the Lessees' claim here is for breach of contract. The mere fact that the breach is asserted against the agency does not make the Lessees' claim subject to agency review. The Lessees have not sought review of any specific agency "action" or "inaction." Instead, the Lessees seek to bring a claim for breach of contract

by the agency and have used agency “action” or “inaction” as evidence of that claim. To hold that Lessees’ claims are restricted to review under the APA would prevent any person with a contract with an agency from bringing an action to enforce that contract outside of the administrative process; the aggrieved party would thus be stuck within the administrative review process and would not be able to seek judicial enforcement of a valid contractual right.

1. The Lessees’ Contract Claims do Not Fall Under the APA Because the Lessees’ Claim for Breach of Contract Does Not Challenge the Validity of Agency Action

Contrary to the arguments of the Land Board, the Lessees’ breach claims are concerned with the effect of the December 21 decision on the Lessee contracts and are not a challenge of the administrative process that led to that decision. The Oregon Court of Appeals has addressed the distinction between the right to bring a claim for breach of contract and the right to bring a petition for review of agency action in a case involving an allegation of breach of contract against the Oregon State Lottery:

The sole avenue for review of the validity of the final agency orders is through the APA. . . . [H]owever, plaintiff is not precluded from pursuing a breach of contract action against an agency that allegedly used the order [agency action] to breach the agreement. Plaintiff’s claim does not challenge the validity of the order; it claims that the order communicated the fact of the breach of the terms of the contract. Thus, it is not seeking judicial review of the agency action for compliance with administrative law, but instead is seeking a remedy for the consequences caused by the order, *i.e.*, it allegedly constituted a breach of the contract. The question of whether an agency’s action is in violation of the terms of an agreement the agency has made with another party is not a question of administrative law; it is a classic question of contract law.

Any agency can breach a contract in various ways. . . . When an agency uses the administrative process to violate an agreement, the

other party may seek to invalidate the agency action that constituted the breach, on the basis that the action did not comport with administrative law. In such a case, APA review would be exclusive as to the validity of the agency action. Here, plaintiff is not claiming that the agency action violated a statute or rule or was otherwise in violation of administrative law. Instead, it is claiming that the action constituted a breach of the agency's agreement. Thus, plaintiff's claim does not fall under the APA any more than it would have had defendant's alleged breach occurred through conduct rather than through issuance of an order.

Premier Tech. v. State By & Through Oregon State Lottery, 901 P.2d 883, 887-88 (Or. App. 1995) (emphasis added) (ruling upheld and cited by *Mendieta v. State, By & Through Div. of State Lands*, 941 P.2d 582, 602-03 (Or. App. 1995) (emphasis added) (“plaintiffs’ requested relief in no way depends on the validity or invalidity of an agency order. It is predicated exclusively on principles of contract [] law that are brought to bear as a consequence of the parties’ conduct[]”).

Similarly, the Lessees’ contract claims are not concerned with the procedural validity of the Land Board’s December 21 decision, but instead with the result of that decision on the Lessees’ current contractual rights. *Premier Tech.*, 901 P.2d at 888 (finding that reliance on an agency action to show breach is not the same as seeking review of the agency action). The Lessees’ claims solely concern principles of contract law, and not principles of administrative procedure. *See Mendieta*, 941 P.2d at 602-03.

Idaho has repeatedly permitted parties to bring breach of contract claims against state agencies without requiring judicial review under the APA. *See Hayden Lake Fire Prot. Dist.*, 141 Idaho at 400, 111 P.3d at 85 (involving claims against the State Insurance Fund for breach of

insurance agreement); *J & J Contractors/O.T. Davis Const., A.J.V. v. State*, 118 Idaho 535, 797 P.2d 1383 (1990) (involving claims against the Idaho Board of Transportation for breach of construction contract); *Challis Irr. Co. v. State*, 107 Idaho 338, 689 P.2d 230 (1984) (involving claims against Idaho Department of Fish and Game for breach of contractual obligation under license agreement). Lessees' claims, likewise, are not restricted to judicial review of agency action since the Lessees only seek to enforce their current contractual rights.

2. The Lessees' Claim for Breach of Contract is Not Statutorily Subject to Review Under the APA

The Lessees are not challenging the Land Board's action on December 21. The Land Board could have taken any action or no action, aside from deciding to uphold its lease with the Lessees, on December 21 and Lessees would still have brought a claim for breach of contract. The action taken by the Land Board on December 21 is merely evidence of the Lessees' claim that the Land Board breached the 2001 Lease. The Attorney General's argument, and the district court's decision, that the Lessees can only obtain redress through the APA fails because the Lessees are not contesting the administrative procedures; they are contesting the breach of their lease.

"A person aggrieved by final agency action other than an order in a contested case is entitled to judicial review under this chapter, if the person complies with the requirements of

sections 67-5271 through 67-5279, Idaho Code.” I.C. § 67-5270(2).⁸ “Agency action” is defined as “(a) The whole or part of a rule or order; (b) The failure to issue a rule or order; or (c) An agency’s performance of, or failure to perform, any duty placed on it by law.” IDAPA 20.01.01.005.03; see also I.C. § 67-5201(3). It is undisputed that the allegations of breach arising from the December 21 action do not constitute a “rule” for purposes of this analysis. Thus, in order for jurisdiction to exist for judicial review of the December 21 action, Lessees must be challenging a final agency action based on (1) an order, whether by itself or the failure to issue an order; or (2) the Land Board’s performance of, or failure to perform, any duty placed on it by law.

a. The Land Board’s December 21 Action is Not a Reviewable Order

Even if the Lessees were contesting the December 21 action of the Land Board, such action was not an order as defined by the statute. An order is “an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons.” I.C. § 67-5201(12) (emphasis added); *see also* IDAPA 04.11.01.005.12. The action taken by the Land Board on December 21, does not concern the legal rights of one or more specific persons. The district court found that the Land Board’s December 21 action was an order because it “determined the rights of the cottage site Lessees.” R. Addendum Vol., p. 31. The Lessees disagree. The December 21 decisions

⁸ Although, Idaho Code § 67-5270(3) permits review of orders in contested cases, the Land Board’s decisions involving “the direction, control or disposition of public lands” are not considered contested cases. See I.C. § 58-122. A contested case is defined as “[a] proceeding by an agency . . . that may result in the issuance of an order[.]” I.C. § 67-5240.

determined the lease terms that would be offered to prospective lessees, as opposed to specific individuals or a group of individuals. Idaho law is clear that in order for there to be a reviewable “order” of agency action the action must address the legal interests of “one or more specific persons.” I.C. § 67-5201(12) (emphasis added). The December 21 action does not address the legal interests of any specific person, and only addresses the legal interests of an undefined group of potential future lessees. The Land Board’s action does not concern the lease rates that would be offered to specific individuals and, therefore, does not constitute an order under the APA.

b. The Land Board’s Action Potentially May be Reviewable as the Agency’s Performance of or Failure to Perform a Legal Duty, But Any Such Potential is Immaterial

The district court found that the December 21 action was the “Land Board’s performance of, or failure to perform, any duty placed on it by law based on the mandates placed on the Land Board by Article IX, Section 8 of the Idaho Constitution and I.C. § 58-310A.” R. Addendum Vol., p. 31. Presumably, this decision is based on Idaho Code § 58-310A’s requirement that “the board shall insure that each leased lot generates market rent throughout the duration of the lease.” I.C. § 58-310A. However, it is immaterial whether the December 21 action is reviewable “action” under the Land Board’s duty to ensure market rent is achieved because the Lessees are not contesting the action taken on December 21. Instead, the Lessees have sued the Board for breach of their lease. Therefore, the Board’s duty to ensure market rent is achieved, and whether its action on December 21 was to achieve that end or not, is not the issue that the Lessees take with the Board’s action. The Lessees only consider that action evidence of their claim.

In a similar decision issued by this Court, it was found that discretionary decisions by an agency are not reviewable when they arise out of the agency's contract with a third-party. See *Hayden Lake Fire Protection Dist.*, 141 Idaho at 400, 111 P.3d at 85. In *Hayden Lake*, this Court considered a case involving a breach of contract claim an insured brought against the State Insurance Fund ("SIF"). *Id.* Similar to the present case, the Court held that although the APA does not preclude judicial review of "agency actions that are 'committed to agency discretion by law,'" the APA did not apply in the present instance because the insured's claims arose out of their contracts with SIF and related to SIF's discretion in distributing surplus and dividends. *Id.* Therefore, although the Land Board's December 21 action likewise constituted an exercise of agency discretion, the APA does not apply because the Lessees' claims arise out of their contract with the Land Board. See generally I.C. § 58-304(1) (granting the Land Board the discretion to set lease terms, including rental formulas). Therefore, the Land Board's December 21 action does not constitute "agency action" for purposes of statutory review and instead is simply evidence for the Lessees' underlying claim for breach of contract.

In other words, despite the Board's numerous legal duties to manage endowment lands, the Lessees are not contesting any of the decisions that relate to those legal duties. Although any number of those actions may be subject to review under the APA as part of the Land Board's legal duties, as in *Hayden Lake*, the Lessees do not seek review of any such actions and instead bring a claim that arises out of their contract with the Land Board. The only decisions Lessees are contesting are decisions to breach the lease with the Lessees. There is no legal duty for the Land Board to breach its current contractual obligations.

IV. CONCLUSION

For the forgoing reasons, this Court should reverse the district court's decision that the Lessees' civil action was subject to the Administrative Procedures Act and remand this matter for further proceedings consistent with the Court's opinion.

DATED this 16th day of February, 2012.

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Attorneys for Defendants-In-Intervention-Respondents
and Cross-Appellants Gladys Babcock, et al., as
Trustee of The Babcock Trust, et al.

CERTIFICATE OF SERVICE

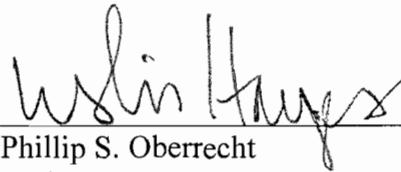
I HEREBY CERTIFY that on the 16th day of February, 2012, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Lawrence G. Wasden
Attorney General, State of Idaho
954 W. Jefferson Street, 2nd Floor
Boise, ID 83702
*Attorney for Plaintiff-Appellant-Cross
Respondent*

- ☐ U.S. Mail, Postage Prepaid
- ☒ Hand Delivered
- ☐ Overnight Mail
- ☐ Telecopy
- ☒ Electronic Transmission

Charles B. Lempesis
ATTORNEY AT LAW
1950 West Bellerive Lane, #110,
Coeur d'Alene, ID 83814
*Attorney for Defendant Intervenor-
Respondent-Cross Respondent*

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Telecopy
- ☒ Electronic Transmission



Phillip S. Oberrecht
Leslie M. Hayes
Slade D. Sokol

EXHIBIT A



COTTAGE / RESIDENCE SITE LEASE
W ANTHONY PARK/GAIL CHALOUPKA
No. R-5049

This lease agreement is made and entered into by and between the State of Idaho, acting by and through the State Board of Land Commissioners (LESSOR) and W ANTHONY PARK/GAIL CHALOUPKA, 706 WARM SPRINGS AVENUE, BOISE, ID 83712 (LESSEE), collectively referred to herein as the "Parties." In consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

This lease shall commence JANUARY 1, 2001, and terminate DECEMBER 31, 2010, unless terminated earlier as provided in this lease.

The LESSOR does hereby lease and demise unto the LESSEE, at the rate and for the use specified herein, the lands described as follows (hereinafter referred to as the "leased premises"): T19N, R3E, Section 34, Lot 38, Block 1, Pilgrim Cove AP, Valley County.

In consideration of the foregoing, the covenants, restrictions and conditions in the attached, herein incorporated by reference as Attachment A, are hereby agreed to by LESSEE and LESSOR.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written,

IDAHO STATE BOARD OF LAND COMMISSIONERS

Pete T. Cenarrusa
Secretary of State

Winston A. Wiggins
Acting Director, Idaho Department of Lands



[Signature]
President of the State Board of Land Commissioners
and Governor of the State of Idaho

STATE OF IDAHO, COUNTY OF ADA

On this 18th day of April, in the year 2001, before me, a Notary Public in and for said State, personally appeared Dale Kempf, known to me to be the President of the Idaho State Board of Land Commissioners and the Governor of the State of Idaho; and Pete T. Cenarrusa, known to me to be the Secretary of the State of Idaho and Winston A. Wiggins, known to me to be the Acting Director, Department of Lands, that executed the within instrument, and acknowledged to me that the State Board of Land Commissioners of the State of Idaho and the State of Idaho executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.

Susan Moore
Notary Public

[Signature]
Residence

6-8-2001
Commission Expires

LESSEE AND NOTARY SIGNATURES

W. Anthony Park (LESSEE)

Gail Chaloupka (LESSEE)

STATE OF Idaho COUNTY OF Ada

On this 18th day of April, in the year 2001, before me, a Notary Public in and for said State, personally appeared

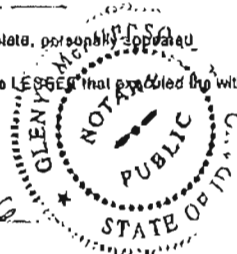
W. Anthony Park & Gail Chaloupka, known to me to be the LESSEES that executed the within instrument, and acknowledged to me that they executed same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.

[Signature]
Notary Public

Residence

11/7/06
Commission Expires



STATE OF IDAHO
Department Of Lands
RESIDENCE SITE LEASE
ATTACHMENT A

A. DEFINITIONS

- 1.1 **Definitions.** For purposes of this lease, the following definitions shall apply:
- 1.1.a. The word "**abandonment**" shall mean the relinquishing of all interests in property including, but not limited to, real property, improvements, fixtures, or personal property with no intention to reclaim or reuse.
 - 1.1.b. The phrase "**approved improvements**" shall mean those improvements that have been erected with the consent of the State Board of Land Commissioners and such other agencies or departments of the State of Idaho as are required to give consent hereunder. Non-approved improvements in existence at the time of execution of this lease that otherwise would be permitted by LESSOR, shall be treated as approved improvements under this Lease.
 - 1.1.c. The phrase "**assessed value**" shall mean the value of a property according to the tax roles in ad valorem taxation.
 - 1.1.d. The word "**commercial**" shall mean any use of the premises for profit including, but not limited to, rental of the premises to third parties for more than fourteen (14) days a year, and any rental through a management company or service.
 - 1.1.e. The word "**improvement(s)**" shall mean buildings or other relatively permanent structures, additions, or developments located on, or attached to, the leased premises including, but not limited to, buildings, garages, fences, sheds, homes, driveways and decks.
 - 1.1.f. The phrase "**leased premises**" or "**residence site**" shall mean: A particularly described parcel of state endowment land owned by the State of Idaho in fee simple and which has been made available to private individuals through a lease for the purpose of constructing and maintaining a residence.
 - 1.1.g. The word "**Lessor**" shall mean the State Board of Land Commissioners and Idaho Department of Lands.
 - 1.1.h. The phrase "**non-approved improvements**" shall mean such improvements as have been erected without the consent of the State Board of Land Commissioners and the consent of such other agencies or departments of the State of Idaho. All non-approved improvements shall be subject to removal upon notice by LESSOR.
 - 1.1.i. The word "**residence**" shall mean permanent improvements owned by a LESSEE which are placed on a residential site with the consent of LESSOR including, but not limited to, any improvement used as a dwelling for owner occupancy only and not for commercial property. Mobile homes, motor homes, and trailers shall not be considered a residence for purposes of this lease. Provided, however, mobile homes that conform to state building codes and that are mounted on a permanent foundation with wheels removed are acceptable.
 - 1.1.j. The word "**valuation**" shall mean the process of estimating the market value of a specific parcel of endowment land as of a given date. Valuation is a term used interchangeably with appraisal. A valuation may be done by a qualified employee of LESSOR, a county assessor's office, an MAI appraiser or SRI appraiser, at the sole discretion of the lessor.

B. USE OF PREMISES

- 1.1 **Residential Use Only.** The leased premises and any improvements thereon shall be used by LESSEE solely for residential purposes. Provided, however, short term seasonal rental for no more than fourteen (14) days each calendar year shall be allowed, and may occur without prior consent of the LESSOR.
- 1.2 **All Other Uses Prohibited.** No other uses shall be made of the leased premises or improvements by the LESSEE without prior written approval of the LESSOR. In no event, shall the leased premises be devoted to any business or commercial use, nor shall any enterprise of a commercial nature be permitted to exist thereon. The use of a management company or other entity to market and manage the property as a rental is prohibited.

C. LEASE TERM/RENEWAL

- 1.1 **Provided by Statute.** The term of this lease shall be for no more than ten (10) years pursuant to Idaho Code (I.C.) § 58-307(1), and for the period of years as set forth in the attached cover lease. Renewals of this lease may be granted by the LESSOR as determined by the LESSOR at the LESSOR'S discretion pursuant to I.C. § 58-310A.

D. RENTAL RATE

- 1.1 **Rental Rate.** Rent shall be two and one half (2.5%) of current fair market value of the leased premises, as determined by valuation administered by the LESSOR or by valuation as determined by the assessor. The value of the leased premises shall be determined as though the leased premises is vacant and unimproved, subject to any outstanding rights and reservations of record, and without any deduction or credit for LESSEE-owned site improvements. This rental rate was adopted and approved by the Idaho State Board of Land Commissioners on December 15, 1998.
- 1.2 **Rental Payment.** The rent shall be payable on or before January 1 of each successive year or, in the alternative, LESSEE may pay rent in two installments with one-half (½) rent due on or before January 1 and one-half (½) rent due on or before June 1. LESSEE shall pay the annual rental to LESSOR without abatement, offset, or deduction of any kind.
- 1.3 **Rent Paid In Advance.** LESSEE agrees to pay to the LESSOR, in lawful money of the United States, each year's rent in advance, such rent to be calculated pursuant to LESSOR'S most current formulas at the time the rental is calculated or recalculated.
- 1.4 **Rent Subject to Change.** LESSOR reserves the right to increase or decrease the rent to be paid by the LESSEE effective on January 1 of any calendar year, in accordance with the rental rate formula set forth herein. LESSEE will be notified in writing one hundred and eighty (180) calendar days in advance of any increase in rental.
- 1.5 **Valuation.**
- 1.5.a. **Valuation Process.** The property shall be valued each five (5) years, and updated annually by indexing based on market data, after the first readjustment, which shall occur between 2003 and 2006. The valuation may be done by a qualified employee of LESSOR, a county assessor's office, or by an independent licensed appraiser hired by LESSOR. If an assessment is used, it may be done by a county assessor's office for taxing purposes or under contract with LESSOR. All valuations shall be administered and controlled by LESSOR, and all appraisers shall use appraisal instructions provided by the LESSOR. The LESSOR reserves the right to accept or reject any valuation at its discretion.

1.5.a.i. **Priest Lake.** The land value base shall be the 1999 Bonner County value of lease lots less twenty percent (20%), or as adjusted by the Board. The land value will be adjusted annually based on an index, as determined by market data collected by the Department until the readjustment period between 2003 and 2006. The

annual adjustment will not exceed five percent (5%) during the first period, and it is not appealable.

At the time of the land value readjustment, the annual index will be revised based on the previous five (5) year history of market data increases in lot value. If the index is five percent (5%) or less, it is not appealable. If the index exceeds five percent (5%) it can be appealed to the State Board of Land Commissioners.

The LESSOR or Lessees can request a readjustment of land value and the index any time during the years 2003-2008. A readjustment will occur no later than 2008. Readjustment of lot values will be based on valuation of current market value of the lots. Lot value readjustments will be done every five (5) years from the date of the first readjustment and updated annually by indexing based on market data, after the first readjustment.

1.5.a.ii. Payette Lake. LESSOR will rely on lot values as established by the Valley County Assessor.

1.5.b. Appeal of Lot Valuation. Upon valuation or assessment of the leased premises, the LESSEE shall have the right to appeal to the Idaho Department of Lands the valuation or assessed lot value that forms the basis of the rent calculation. The procedures for appealing lot valuation are set forth in a policy approved by the State Board of Land Commissioners ("Land Board") on February 13, 2001. Said policy is attached hereto as Attachment C and is incorporated herein by reference. If LESSEE is aggrieved by any final decision regarding the leased premises valuation made by the LESSOR, LESSEE may, after exhausting the administrative appeal procedures, file a petition for judicial review pursuant to the Idaho Administrative Procedures Act. LESSEE must timely pay the full rent amount, along with any late fees and interest, if any, while any appeal is pending including, but not limited to, administrative or judicial appeal proceedings.

1.6 Late Payment Charge. If annual rental is not paid in full by the date it is due, the LESSOR may declare a default and terminate the lease upon thirty (30) days written notice to LESSEE. In addition, in the event any rent due hereunder is not paid in full when due, LESSEE shall pay, in addition to such rent, a late charge in the first calendar month of such delinquency the amount of TWENTY-FIVE DOLLARS (\$25.00) or ONE PERCENT (1%) of the unpaid rent, whichever is greater. For each subsequent calendar month of such delinquency, LESSEE shall pay an additional late charge equal to ONE PERCENT (1%) of the then unpaid rent, plus interest. The parties acknowledge and agree that the late charge described herein is a reasonable attempt to estimate and to compensate LESSOR for higher administration costs associated with administering such late payments and is not intended as a penalty. By assessing this late charge, LESSOR does not waive any right to declare a breach and to pursue any right or remedy available to LESSOR by reason of such breach, after expiration of any applicable notice or cure period.

1.6.a. Extensions of Time to Pay. LESSEE may make application to extend the time for paying rent in accordance with the then existing statutes, rules and policy applicable to state endowment lands. If an extension is requested and approved by LESSOR before the deadline for paying rent, then the LESSEE shall not be required to pay a late payment fee, but shall be required to pay interest, in addition to such rent, at the then existing rate established by the LESSOR.

1.7 Hardship Claim. The Land Board has adopted a Hardship Claim Policy that allows a LESSEE with a demonstrated undue financial hardship an opportunity to defer rental increases for a period of up to two (2) years to allow sufficient time to arrange for sale or assignment of the lease. Any amounts deferred under this policy, plus interest, shall be paid to the LESSOR upon sale or assignment of the lease, or upon expiration for the deferment period. The Hardship Claim Policy was adopted and approved by the Land Board on December 15, 1996. Said policy is attached as Attachment B and is incorporated by reference herein.

- 1.8 **Lien.** The amount of the unpaid rent, late charge, and interest shall be a lien on the LESSEE'S improvements and other property on the leased premises.

E. SUBLEASING OR ASSIGNMENT

1.1 Subleasing And Assignment Generally.

- 1.1.a. **No Sublease Without Consent.** LESSEE shall neither sublease all or any part of the leased premises of LESSEE'S interest under this lease, nor assign this lease, nor take out a mortgage or deed of trust without first having obtained the written consent of LESSOR or its authorized agent, which consent shall not be unreasonably withheld.
- 1.1.b. **Necessary Forms.** Any request for approval of a sublease, assignment, mortgage, or deed of trust must be in writing on forms provided by the LESSOR and accompanied by a FIFTY DOLLAR (\$50.00) processing fee. Any attempt by LESSEE to sublease LESSEE'S interest in the land or any part of the land or to assign this Lease or to take out a mortgage or deed of trust, shall be void and shall constitute a breach of this lease, unless LESSOR has given such prior written consent, which consent shall not be unreasonably withheld.
- 1.1.c. **Good Standing Required.** No request for LESSOR'S approval of any assignment or sublease will be considered unless all rent due, late payment fees, and interest has been paid in full, and LESSEE is in good standing under the terms of the lease.
- 1.1.d. **Lessee Owned Improvements.** Upon approved sublease or assignment, ownership of any existing LESSEE owned improvements under this lease must be separately negotiated between LESSEE and such SUBLESSEE or Assignee, provided however, ownership of any such improvements which remain on the lease premises after assignment of this Lease shall be treated by LESSOR as being owned by such assignee for purposes of any payments for improvements to be made under this lease, including payments under Paragraph K.1.4.c. below.
- 1.1.e. **Sublease Subject To Terms.** Any sublease or assignment will be subject to the terms and provisions of this Lease. Sublease agreements shall include provisions that the SUBLESSEE will abide by all terms of this lease. The LESSOR may impose additional requirements as a condition of approving the sublease request.
- 1.1.f. **Specific Transaction Only.** Any consent by LESSOR herein contained or hereafter given to any act or assignment, mortgage, pledge, or encumbrance shall be held to apply only to the specific transaction hereby or thereby approved.

1.2 Subleasing.

- 1.2.a. **No Release.** No sublease will act as a release of LESSEE'S obligations hereunder unless LESSOR executes a separate written release of LESSEE. LESSOR has no obligation to so release LESSEE, and LESSOR can withhold such release at LESSOR'S sole discretion.

1.3 Assignment.

- 1.3.a. Assignments of lease must be done on forms provided by LESSOR.
- 1.3.b. **Ten Percent (10%) Premium Rent.** Upon sale of the lease by LESSEE, the LESSEE shall pay to the LESSOR ten percent (10%) of the leasehold value. The leasehold value shall be determined by subtracting the value of approved lessee-owned improvements sold from the total sale price. LESSEE shall have the option to determine the value of improvements by using the county assessed valuation of improvements or by paying for a LESSOR administered appraisal of improvement value.

1.3.c. **Proof of Assignment.** In cases of assignment due to sale of the LESSEE'S interest, LESSEE must provide to LESSOR one copy of the purchase agreement or contract of sale signed and acknowledged by the buyer (assignee) and seller (assignor). In the case of assignment without a sale, appropriate documentation must be provided to the LESSOR establishing that the lease should be assigned. This may include, but not be limited to, a letter from LESSEE indicating the transfer of the lease as a gift; a divorce decree; a copy of will or probate order. LESSOR may require additional proof as necessary.

1.4 Mortgage/Deeds of Trust.

1.4.a. **No Mortgage Without Consent.** LESSEE shall not mortgage, pledge or otherwise dispose of any interest in the lease or the improvements without first obtaining the written consent of LESSOR, on forms provided by LESSOR. Copies of any such mortgage, deed of trust, or other document reflecting such a transaction must be filed with LESSOR.

1.4.b. **Mortgage Subject To Terms.** Any mortgage, deeds of trust or other such transactions approved under this section shall be subject to each and all of the covenants, conditions, and restrictions stated in this Lease and in addition subject to all rights and interests of LESSOR.

F. ENVIRONMENTAL, SAFETY AND SANITARY REQUIREMENTS

1.1 **No Hazardous Materials.** LESSEE shall neither commit nor permit the use, placement, transport or disposal of any hazardous waste, including petroleum products, such as oil, gasoline, or any other substance that is or is suspected to be a hazardous substance or material, not including the following materials kept for the LESSEE'S own residential use and only in small quantities: gasoline for uses such as lawnmowers, kerosene, heating oil, propane tanks or other commercial sources of heating. LESSEE shall be responsible and shall pay all costs for the removal or taking other appropriate remedial action regarding any hazardous waste, substances, or materials which LESSEE may have caused to be introduced on the land. Any such remediation or removal or storage must be conducted in accordance with applicable federal, state, or local law, regulation, rule or ordinance and LESSEE shall immediately, upon the introduction of any hazardous waste, substances or materials onto the leased premises, contact the Idaho Department of Environmental Quality (DEQ), provided however, LESSEE shall not forestall commencing any necessary remediation while negotiating the terms of any consent order with DEQ, unless LESSEE is so authorized in writing by LESSOR. LESSEE shall indemnify, defend and hold LESSOR harmless from all costs, expenses, damages or fines relating to pollution and hazardous materials including, without limiting the generality of the foregoing, attorney fees and costs of defense or of enforcement of LESSOR'S rights hereunder.

1.2 **Fire and Safety Regulations.** LESSEE shall comply with all applicable federal, state and local laws, rules, regulations and ordinances including, but not limited to, those of the Idaho Department of Lands for fire protection and prevention, and shall at all times observe reasonable precautions to prevent fire on the leased premises. LESSEE agrees to keep the land free from fire hazards. Firewood storage shall be confined to one location, away from the recreational residence. Roofs shall be kept clear of all debris and needles on a regular basis to minimize fire hazard. LESSEE is prohibited from burning garbage or household trash. Any burning on the leased premises, including the burning of wood, weeds or other debris, but excepting simple campfires necessary for the use under this Lease, requires the prior written permission of LESSOR. Any burning must comply with applicable federal, state or local law, regulation, rule or ordinance. Barbecue devices, designed for use out of doors are permitted.

1.3 **Sanitary Requirements.** LESSEE shall at all times keep the land in a clean and sanitary condition, free of trash, garbage and litter so the land is maintained in the same or better condition as when this lease was issued. LESSEE shall not dispose of sewage except in conformity with applicable federal, state, and local law, rules and regulations pertinent to LESSEE'S use and shall dispose of sewage on the leased land only if specifically authorized by the LESSOR and the local governmental entity having jurisdiction over such matters. The LESSEE shall not store, dispose of, or otherwise maintain trash, garbage, litter, unused or

discarded household items, or unlicensed or abandoned vehicles, boats or trailers on the leased land and shall dispose of all such trash, garbage or other items in conformity with all legal requirements, and at a place designated by LESSOR or its authorized agent. LESSEE is responsible for all costs associated with sewage, garbage and litter disposal. LESSOR may require LESSEE to furnish a certificate or other satisfactory proof of compliance with such laws and regulations.

G. NO WARRANTY OF SUITABILITY; QUIET ENJOYMENT

- 1.1 **No Warranty.** LESSEE acknowledges that neither the LESSOR, nor any agent of the LESSOR has made any representation or warranty with respect to the land or concerning the suitability of the land for the uses intended by the LESSEE. LESSEE acknowledges that it has accepted the land in an AS IS CONDITION, accepting any and all known or unknown faults therein.
- 1.2 **Quiet Enjoyment.** LESSOR agrees that the LESSEE, upon payment of the rent and performing the terms of this Lease, may quietly have, hold and enjoy the land, for the purposes and uses allowed hereunder, during the term hereof. LESSEE acknowledges that the lease is non-exclusive, and the LESSOR retains the right to use of the land, or to grant rights to others for use of the land, or to authorize the public to use the land, to the extent any such use is not incompatible with LESSEE'S purpose and uses allowed hereunder.
- 1.3 **Use Limited To Site.** LESSEE shall confine all personal property, vehicles, and pets to the recreational residence site. No encroachment onto adjacent property, whether state land or another residence site, will be permitted.

H. WATER DEVELOPMENT

- 1.1 **Water Development.** LESSEE shall be entitled to water for domestic purposes only insofar as natural springs, streams, lakes, existing wells or water systems serving the land are capable of supplying the same and are not subject to a prior right or claim. LESSEE shall neither drill and use a water well nor develop and use any source of water without the prior written consent of LESSOR or its authorized agent, plus the prior written consent of any department or agency of the State of Idaho having jurisdiction to regulate water rights in this state. All water rights with respect to the land shall be taken in the name of the State of Idaho. The LESSEE shall not cause any water to be conveyed off the land without prior written approval of the LESSOR.
- 1.2 **Water Systems.** If water is supplied to the land by a water system operated by the State of Idaho, the use of such system and the supply of water provided thereby may be abandoned or terminated upon thirty (30) calendar days written notice to LESSEE from LESSOR or its authorized agent. Neither the LESSOR nor its agents and employees nor any entity of the State of Idaho shall be liable in any manner for damage or inconvenience to the LESSEE by reason of failure of, damage to, or termination or abandonment of the operation of any water system or source supplying water to the leased premises.

I. LANDSCAPING AND REMOVAL OF VEGETATION

- 1.1 **LESSOR Consent Required.** LESSEE shall neither landscape the leased premises nor remove any vegetation, including trees, therefrom without prior written consent of the LESSOR or its authorized agent. Provided, however, existing grass and vegetated areas may be mowed, trimmed, weeded, and irrigated to produce a managed appearance. Expansion of lawn areas is discouraged, as is formal suburban landscaping. The use of native species of plants and trees is encouraged, and existing native vegetation should be retained wherever possible. The residences and sites shall be maintained to reduce fire hazards and to provide a natural, but managed appearance. Felling of hazard trees on the residence site is the responsibility of the LESSEE. At LESSEE'S request, LESSOR will identify, mark and authorize removal of hazard trees. However, LESSEE shall take immediate action to remove any hazardous tree that poses immediate danger to life or property without contacting LESSOR.

J. NOXIOUS WEEDS

- 1.1 Lessee Obligations.** LESSEE shall cooperate with LESSOR or any other agency authorized to undertake programs for control or eradication of noxious weeds. LESSEE shall take measures to control noxious weeds on the leased land in accordance with Title 22, Chapter 24, Idaho Code.

K. CONSTRUCTION OF IMPROVEMENTS

1.1 Construction of Improvements/Prior Consent of LESSOR Required.

1.1.a. Generally. Without having secured the prior written consent of the LESSOR, plus the prior written consent of any other department or agency of the State of Idaho having jurisdiction under the circumstances, LESSEE or his agents, shall not erect any structure or improvement including roads on the lease premises; shall not place or build any dock, piling, quay, mooring device or boathouse in or on the water frontage, if any, adjacent to the leased premises; shall not place any houseboat in the water, if any, adjacent to the leased premises; and, shall not make any excavations in, fills upon or alterations of any lake or stream bed, if any, adjacent to the leased premises.

1.1.b. Procedures To Obtain LESSOR'S Consent. LESSEE may construct improvements upon the leased site under limited circumstances, and only when consent has been granted by LESSOR in accordance with this lease. LESSEE must first obtain the prior written consent of LESSOR or LESSOR'S designee. LESSEE must furnish a complete set of construction plans and an accurate plot plan of all proposed improvements contemplated by LESSEE and submit those plans and drawings to LESSOR or LESSOR'S designee. Once the construction plans are approved and permitted by LESSOR, then LESSEE shall construct the improvements in full compliance with the approved plans and all applicable building codes, rules and laws. Consent is not required for ordinary maintenance and repairs to existing approved improvements as needed from time to time. Provided, however, the replacement of an improvement shall require consent and compliance with the procedures set forth herein.

1.1.c. Non-approved Improvements. Any structures, buildings, or improvements of any kind whatsoever constructed, placed, erected or caused to come into existence without such prior written consent shall be subject to immediate removal by LESSOR or its authorized agent, the cost of such removal or abatement to be charged to LESSEE and to remain a debt of LESSEE to LESSOR until the same is paid; provided, that the failure of LESSOR to remove or abate or to cause removal or abatement of the same shall in no way be deemed a waiver of the LESSOR'S right to remove or abate the same. LESSOR, at LESSOR'S sole discretion, may require LESSEE to remove any improvement or structure placed on the land in violation of this lease.

1.1.d. Improvements Below The Ordinary High Water Mark. Any docks, pilings, quays, mooring devices, boathouses, houseboats, fills, alterations or encroachments of any kind below the ordinary high water mark of the lake shall require a lake encroachment permit from the Idaho Department of Lands, pursuant to the Idaho Lake Protection Act, I.C. §§ 58-1301, et seq., and the common law Idaho Public Trust Doctrine. See, I.C. §§ 58-1201, et seq. It shall be the responsibility of the LESSEE to secure any lake encroachment permit through the normal administrative process of the Department of Lands. This lease shall not in any way be construed as consent or entitlement to any such permit or encroachment.

1.2 Cost of Improvements. Any improvement constructed by or at the request of LESSEE, shall be constructed at LESSEE'S own expense unless LESSOR and LESSEE shall have entered into a prior written cost sharing agreement for construction of such improvement.

1.3 Other Requirements.

1.3.a. Setbacks. Construction standards and setbacks shall be in accordance with adopted policy of the Idaho Department of Lands.

- 1.3.b. **Fences.** Fences or gates on the leased premises will not be permitted except by special permission from the Director of the Idaho Department of Lands and then only to prevent encroachment from private lands.

1.4 **Treatment of Improvements Upon Lease Expiration, Termination, Cancellation, or Abandonment**

- 1.4.a. **Upon Default By Lessee.** Upon the default of LESSEE of any of the terms of the Lease, LESSOR may remove such approved or non-permitted improvements and charge the cost of removal and restoration to the LESSEE, the same to remain a debt of LESSEE to LESSOR until paid. LESSEE shall be responsible for all costs associated with the removal of the improvements including, but not limited to, the cost of removal and restoration of the land. LESSEE shall also be responsible for all collection costs including legal fees and interest. In the alternative to removal of the improvements upon default by LESSEE, LESSOR may require LESSEE to remove any approved or non-approved improvements at LESSEE'S sole cost and expense.
- 1.4.b. **Upon Non-Renewal By Lessor.** Should LESSEE apply to renew this lease in the manner provided by law and such application be denied, then LESSOR shall purchase the approved improvements placed or caused to be placed on the leased premises by LESSEE, at the fair market value of such improvements as of the effective date of expiration. Fair market value of LESSEE improvements shall be established by appraisal. A request for renewal by the LESSEE shall not be unreasonably withheld.
- 1.4.c. **Upon Leasing To New Lessee.** Upon expiration or termination of this Lease for any reason, other than a default by LESSEE, in the event LESSOR leases the land to a new LESSEE, LESSOR shall require the new LESSEE to pay the LESSOR the value of the improvements determined through an appraisal conducted by LESSOR that determines the current value of the improvements. Improvement payments shall be first applied towards any rent or other monies due LESSOR before being disbursed to LESSEE. LESSOR does not hereby agree or become obligated to pay any such value to LESSEE, such obligation shall be solely on the subsequent LESSEE, if any. The new LESSEE shall make the payment described above on or before the time of execution of the lease.
- 1.4.d. **Non-permitted improvements.** Non-permitted improvements that are constructed on the land shall be considered a breach of this Lease. Any improvements that are not permitted by LESSOR shall be removed by LESSEE at LESSEE'S sole cost and expense. Upon the expiration of the lease term if non-approved improvements remain on the leased site, then LESSOR may remove such non-approved improvements and charge the cost of removal and restoration to the LESSEE, the same to remain a debt of LESSEE to LESSOR until paid. LESSEE shall be responsible for all costs associated with the removal of the non-permitted improvement including, but not limited to the cost of removal and restoration of the land. LESSEE shall also be responsible for all collection costs including legal fees and interest.
- 1.4.e. **Upon natural expiration with no application to renew.** In the event this lease expires without LESSEE having made application to renew, LESSOR shall have the right to require LESSEE to remove all approved improvements placed or caused to be placed upon the leased premises by the LESSEE, and to require LESSEE to restore the leased premises to as nearly as is reasonably practical to its natural condition, all at LESSEE'S sole cost and expense, or, at LESSOR'S option, to purchase such approved improvements from LESSEE at the fair market value of the same as of the date of expiration.
- 1.4.f. **Abandonment and Forfeiture of Improvements.** Should any improvement covered by this Lease be abandoned, such abandoned improvements placed upon the land by the LESSEE shall be removed by the LESSOR at LESSEE'S cost and expense, such to be a debt of LESSEE to LESSOR until paid.

- 1.5 **LESSOR'S Right of Sale or Exchange and Disposition of Improvements.** In the event of a sale or exchange of all or any portion of the leased premises during the term of this Lease hereof under the rights reserved by LESSOR under Section N.1.1.h hereof, LESSEE hereby covenants to deliver immediate possession of the land so sold or exchanged unto the LESSOR, or to the person or party as may be specified in writing by the LESSOR or LESSOR'S designee. In the event of such sale or exchange, the LESSEE shall have the rights provided by I.C. §58-313, with respect to permitted improvements placed upon the land by the LESSEE; provided that LESSEE shall not be entitled to compensation with respect to any non-permitted improvements made or erected upon the land.

L. NO LIENS

- 1.1 **Liens Prohibited.** LESSEE shall ensure that full payment is made for any and all materials joined or affixed to the land pursuant to this Lease and for any and all persons who perform labor on the land. LESSEE will not permit or suffer any liens, including any mechanics' liens or material suppliers' liens, of any kind or nature to be effected on or enforced against the land for any work done or materials furnished on the land at LESSEE'S instance or request.

M. INSURANCE

- 1.1 **Lessee's Insurance.** LESSEE shall obtain insurance of the types and in the amounts described below.

1.1.a. Homeowner's 3 (HO3) It's equivalent or better and Umbrella

Liability Insurance. LESSEE shall maintain a Homeowner's 3, It's equivalent or better and, if necessary, umbrella liability insurance with a combined limit of not less than five hundred thousand dollars (\$500,000).

1.1.a.i. The Homeowner's insurance and umbrella liability insurance shall be in a form and from an insurance company satisfactory to LESSOR and shall cover liability for bodily injury, property damage and personal injury, arising from LESSEE's use and/or occupation of the premises.

1.1.a.ii. The Homeowner's insurance shall include coverage for the replacement cost of the real property and all improvements located on the premises. The LESSOR is entitled to acquire the improvements constructed on the real property, upon termination or expiration of the lease, and the LESSOR shall be included as a loss payee to the extent of its interest in the improvements.

- 1.1.b. **Other Insurance.** LESSEE shall purchase insurance to cover LESSEE's personal property.

1.2 Lessee's Insurance Policy Requirements.

- 1.2.a. **Evidence of Insurance.** All insurance required under this Article shall be with companies licensed and admitted in Idaho and approved for this Lease by Lessor. LESSOR'S general requirements for such approval includes a Best's rating of A- or better. Prior to taking occupancy or commencing construction and at least annually thereafter, LESSEE shall furnish LESSOR with a certificate of insurance executed by a duly authorized representative of each insurer, and a copy of any applicable policy or policy endorsement showing compliance with the insurance requirements set forth above. All policies required under this Article shall be written as primary policies and not contributing to nor in excess of any coverage LESSOR may choose to maintain.

1.2.a.i. All certificates shall provide for ninety (90) days written notice to LESSOR prior to cancellation or material change of any insurance referred to therein.

1.2.a.ii. Failure of LESSOR to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Lessor to identify a

deficiency from evidence that is provided shall not be construed as a waiver of LESSEE's obligation to maintain such insurance.

1.2.a.iii. Failure to maintain the required insurance may result in termination of this Lease at LESSOR'S option.

1.2.a.iv. If LESSEE fails to maintain the insurance as set forth herein, LESSOR shall have the right, but not the obligation, to purchase said insurance at LESSEE's expense.

1.2.a.v. LESSEE shall provide certified copies of all insurance policies required above within ten (10) days of LESSOR'S written request for said copies.

1.2.b. **No Representation of Coverage Adequacy.** By requiring insurance herein, LESSOR does not represent that coverage and limits will necessarily be adequate to protect LESSEE, and such coverage and limits shall not be deemed as a limitation on LESSEE's liability under the indemnities granted to LESSOR in this Lease.

1.2.c. **Payment of Premiums.** The LESSEE shall pay all policy premiums annually in advance, for each of the insurance policies required under the terms of this Lease. LESSEE shall deliver to the LESSOR evidence of such payment in conjunction with each annual payment of this lease, before the payment of any insurance premiums become in default. The LESSEE shall also cause renewals of expiring policies to be written and the policies or copies thereof, as required by this Lease, to be delivered to the LESSOR at least ten (10) days before the policies expiration dates.

N. RESERVATIONS BY LESSOR

1.1 **Reservations.** The LESSOR expressly reserves and excepts the following rights from the Lease:

1.1.a. To enter upon land, or any portion thereof, during the term of this Lease for any purpose including the purpose of inspecting the property. LESSEE shall permit inspection of the leased premises by an authorized agent of the LESSOR at any reasonable time.

1.1.b. All rights for timber, oil and gas, geothermal rights, mineral rights, easements and rights-of-way, fee title to the land and title to all appurtenances and improvements placed thereon by the LESSOR.

1.1.c. To grant easements, rights-of-way, and leases over the land, providing said easements, rights-of-way, and leases do not conflict with the use of the LESSEE or with the permitted improvements installed and maintained or operated by the LESSEE upon the land. LESSOR shall coordinate with the LESSEE before processing any easement, right-of-way or lease applications on the leased land. This Lease is subject to any lease, right-of-way or easement previously granted over the lands embraced by this Lease.

1.1.d. To require that changes be made in the use under this lease, and/or to the improvements on the leased premises, including to the sanitation or other facilities, for the protection of public health, safety, preservation of property or water quality.

1.1.e. To issue other leases for exploration and development of oil, gas, geothermal and mineral resources or any other lease of the subject land, so long as such other lease is for a higher and better use as determined by LESSOR, or such other lease does not materially interfere with the authorized use under this Lease. In the event any such lease is granted by LESSOR, and such lease materially impairs LESSEE'S use of any improvements constructed on the land by LESSEE with prior written permit from LESSOR, this Lease shall be deemed terminated with respect to such improvement or improvements, and the provisions of § 7.3 (Treatment of Permitted Improvements upon Lease Expiration) shall apply with respect to such improvement or improvements.

- 1.1.f. To reserve as LESSOR'S sole property any and all water from any source arising on state land and to hold water rights for any beneficial use that may develop as a result of this Lease.
- 1.1.g. Rights of access, ingress and egress across the leased premises for LESSOR and its authorized agents and assigns over and across the leased premises including, but not limited to, on existing roads. Said rights of access, ingress and egress shall be for purposes of administration, for providing access to neighboring lots and for any other purpose of the LESSOR.
- 1.1.h. LESSOR reserves the right to sell or exchange all or any portion of the leased premises. LESSEE shall be notified of a scheduled sale at least ninety (90) calendar days prior to sale date. LESSEE shall be notified of a scheduled land exchange at least ninety (90) calendar days prior to the exchange. The execution of this lease by LESSEE constitutes the LESSEE'S written agreement to land exchange as provided in I.C. § 58-138(3). In the event of such sale or exchange, the LESSEE shall have the rights provided by I.C. § 58-313, with respect to approved improvements placed upon the leased premises by the LESSEE; provided, that LESSEE shall not be entitled to compensation with respect to any non-approved improvements made or erected upon the leased premises. In the case of sale or exchange during the continuance hereof, LESSEE hereby covenants to deliver immediate possession of the lands so sold or exchanged unto the LESSOR, or to the person or party as may be specified in writing by the LESSOR or its authorized agent.
- 1.1.i. LESSOR reserves the right to close roads or change access route(s) to the leased premises for road protection, water quality protection, wildlife and fish protection, administrative purposes or any other reason deemed necessary by LESSOR. Planned road closures will be reviewed with LESSEE prior to action by LESSOR. If an access road is closed permanently other access will be provided to the leased premises. Temporary road closures may prevent, limit, or restrict access for a period of time.

O. INDEMNIFICATION

- 1.1 **Lessee Indemnification of Lessor.** During the entire term of this lease, the LESSEE will indemnify, defend and save harmless the LESSOR, the State of Idaho, its officers, agents, respective affiliates, and employees from and against any liability, claims, damages, debts, demands, losses, costs, expenses, actions, obligations, judgments for damages, or injury to persons or property including, but not limited to, reasonable attorney's fees and costs caused by or arising out of, or in connection with any performance, act or omission of LESSEE, or LESSEE'S agents, officers, employees or any person claiming under, by, or through the LESSEE under this lease and/or arising out of the use or occupation of the leased premises by LESSEE, or LESSEE'S agents, officers or employees or any person occupying the same with the LESSEE'S permission; or arising from the LESSEE or LESSEE'S agents, officers or employees failure to comply with any applicable state, federal, local, law, statute, rule, regulation or act. This duty to indemnify, defend and save harmless shall encompass any claims which include or allege negligence of LESSOR, its agents, officers or employees other than claims which arise solely out of negligence on the part of LESSOR, and this duty shall survive the termination or expiration of this Lease.
- 1.2 **Tort Claims Limits.** Provided that such indemnification right shall not be construed as absolving the State from responsibility for liability in damages arising under the Idaho Tort Claims Act, I.C. § 6-901, *et seq.*, for the conduct of its agents, officers or employees as set forth therein.
- 1.3 **Notice.** In the event of any such claims made or suit filed, LESSOR shall give LESSEE prompt written notice of such claims or suits, and LESSEE shall have the right to defend or settle to the extent of LESSEE'S interest under this lease agreement.

P. PAYMENT OF TAXES, ASSESSMENTS OR FEES

- 1.1 **Lessee Obligation.** Unless otherwise provided, LESSEE shall pay all water charges, fees, assessments or taxes of whatsoever nature that may be legally levied or assessed against the leased premises herein described, or any portion thereof or on any improvements thereto. If the same is not paid it shall constitute a lien in favor of the State of Idaho against all improvements on the leased land.

Q. LESSEE'S DEFAULT

- 1.1 **Upon Default.** LESSEE'S failure to comply with any of the terms of this Lease shall be a breach giving rise to a basis for termination of the Lease. LESSEE'S violation of any Land Board or Department of Lands rules, regulations or state laws currently or hereafter adopted and applicable to this lease or the leased land, shall be a breach, giving rise to a further basis for termination of this Lease. LESSOR shall provide LESSEE thirty (30) calendar days written notice of any such breach or violation and, if applicable, the corrective action required of LESSEE. The notice shall specify a reasonable time to make a correction or cure the violation or breach, if such breach is subject to correction or cure.
- 1.2 **Failure to Cure.** If the corrective action or cure is not taken within the specified time or does not occur, then the LESSOR may, at LESSOR'S option, cancel the Lease effective on the date specified in the written cancellation notice. LESSEE shall not, while in default, remove any of the improvements. LESSEE agrees to relinquish possession of the leased land upon breach of any of the conditions herein set forth, with all permanent improvements thereon in good order and condition when such breach results in cancellation or forfeiture of this Lease. In addition to the rights and remedies specifically granted to LESSOR under this Lease, LESSOR shall have such other rights and remedies as against LESSEE as may be available at law or in equity, and LESSOR'S pursuit of any particular remedy for breach or default shall not, in and of itself, constitute a waiver or relinquishment of any other available claim of LESSOR against LESSEE.

R. SURRENDER OF LAND

- 1.1 **Lessee Surrender.** LESSEE shall, at the termination or expiration of this Lease, vacate the leased land, leaving it in the same or better condition than it was in at the time of LESSEE'S entry on such premises under this agreement, except for reasonable use and wear, acts of God, or damage by causes beyond the control of LESSEE, and upon vacating shall leave the demised land free and clear of all rubbish and debris. Where applicable, LESSOR shall require that approved improvements constructed upon the Land shall be acquired by any new LESSEE pursuant to this lease and the then existing applicable state law and rules.

S. RELATIONS OF THE PARTIES.

- 1.1 **Parties Relationship.** LESSEE is not an officer, employee, or agent of the LESSOR. LESSEE covenants that it will satisfy and hold LESSOR harmless against any lien, judgment, or encumbrance filed or made against the leased site at the LESSEE'S sole and separate cost or expense.

T. NOTICES

- 1.1 **Time of Notice.** Any notice of breach given under the terms of this Lease shall be deemed given and delivered on the date when personally delivered or if mailed, the date same is deposited in the United States Mail, and mailed by registered or certified mail, return receipt requested, postage prepaid and properly addressed to the appropriate party.
- 1.2 **Notice.** Any other notice or any demand given under the terms of this Lease shall be deemed given and delivered on the date when personally delivered or if mailed, the date same is deposited in the United States Mail, postage prepaid and properly addressed to the appropriate party.

- 1.3 **Addresses For Notice.** Until changed by notice in writing, notice, demands, and communications shall be addressed to LESSOR at: Idaho Department of Lands 954 West Jefferson Street, Boise, ID 83702, and to LESSEE at the address set forth at the beginning of this Lease. It is Lessee's responsibility to notify Lessor of any change of address.

U. WAIVER

- 1.1 **No Waiver.** The waiver by the LESSOR of any breach of any term, covenant or condition of this Lease shall not be deemed to be a waiver of any past, present or future breach of the same or any other term, covenant or condition of this Lease. The acceptance of rent by the LESSOR hereunder shall not be construed to be a waiver of any violation of the term(s) of this Lease. No payment by the LESSEE of a lesser amount than shall be due according to the terms of this Lease shall be deemed or construed to be other than a part payment on account of the most recent rent due, nor shall any endorsement or statement of any check or letter accompanying any payment be deemed to create an accord and satisfaction.

V. ATTORNEYS' FEES AND COSTS

- 1.1 **Obligation to Pay.** In the event that either party to this agreement shall find it necessary to retain counsel (including the LESSOR using the Office of the Attorney General of the State of Idaho), or to incur costs to interpret or enforce any of the provisions hereof including, but not limited to, any action at law or in equity, the prevailing party (as defined and interpreted under Idaho Rule of Civil Procedure 54) shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees (including, in the case of the LESSOR, fees from the Office of the Attorney General of the State of Idaho), accountants' fees and fees of appraisers or other experts, incurred therein by the prevailing party, including all such costs and expenses incurred with respect to any appeal and such may be included in any judgment entered in any action. No attorney's fees or costs shall be paid by either party for administrative appeal proceedings brought under this lease and in accordance with Land Board procedures.
- 1.2 **Additional Obligation.** In addition, in the event LESSEE fails to perform any act or do anything which LESSEE is required to do under the terms of this Lease, LESSOR shall have the right, but not the obligation, to perform on behalf of LESSEE, any such action and LESSEE shall immediately reimburse LESSOR for all costs and expenses, including attorney fees, (including fees from the Office of the Attorney General of the State of Idaho), incurred by LESSOR in performing such act or thing. LESSEE'S obligation hereunder shall be deemed to be additional rent fully due and payable on demand from LESSOR.

W. LESSEE'S COMPLIANCE WITH APPLICABLE LAWS AND RULES

- 1.1 **Full Compliance.** LESSEE'S use of the Premises shall fully comply with all applicable statutes, ordinances, rules, regulations and laws of federal, state and local governmental authorities. LESSEE shall comply with all applicable rules and regulations and standards promulgated by the State Land Board or the Idaho Department of Lands including, but not limited to, the Department's rules governing the installation of docks and other lake encroachments below the ordinary high water mark of any navigable lake.
- 1.2 **No Waste or Nuisance.** LESSEE shall not use the land in any manner that would constitute loss or waste, nor shall the LESSEE allow the same to be committed thereon. The LESSEE shall not do anything which will create a nuisance or a danger to persons or property.

X. MISCELLANEOUS

- 1.1 **Modification.** This Lease may be modified only by a fully executed lease adjustment on a form as provided by the LESSOR.
- 1.2 **Parties Non-Discrimination.** The parties shall not discriminate against any person because of race, creed, religion, color, sex, national origin or disability.

- 1.3 Paragraph Headings.** The paragraph headings, titles and captions used in this Lease are for convenience only and are not part of the Lease.
- 1.4 Entire Agreement.** This Lease, including all exhibits attached hereto, contains the entire agreement between the parties concerning the subject matter hereof and supersedes any and all prior agreements. The execution of this Lease has not been induced by either party, or any agent of either party, by representations, promises or undertakings not expressed herein and, further, there are no collateral agreements, stipulations, covenants, promises, inducements or undertakings whatsoever between the respective parties concerning this Lease except those which are expressly contained herein. No other understanding, whether oral or written, whether made prior to or contemporaneously with this lease, shall be deemed to enlarge, limit, or otherwise effect the operation of this lease. Provided, however, that the parties recognize that the Land Board decisions dated December 15, 1988, July 13, 1999, and September 14, 1999 have been specifically referenced and incorporated into this lease.
- 1.5 Governing Law and Forum.** This Lease shall be construed in accordance with and governed by the laws of the State of Idaho. In addition, the parties consent to the venue and jurisdiction of Idaho State courts located in Ada County, Valley County, Kootenai County, or Bonner County in the event of any dispute with respect to this Lease.
- 1.6 Applicable Law.** This lease is subject to all current and subsequently enacted statutes, rules, regulations and laws applicable to state endowment lands or this lease. In addition, LESSEE shall comply with all applicable rules, regulations and laws of the State of Idaho or other governmental entities.
- 1.7 Binding on Heirs and Successors.** It is understood and agreed that all terms, covenants and conditions hereof shall be binding upon sublessees, assignees and LESSEE'S heirs, executors or successors in interest.
- 1.8 Severability.** In the event any provision of this Lease shall be held invalid or unenforceable according to law, for any reason whatsoever, then the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.
- 1.9 Counterparts.** This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
- 1.10 Conflict Applications.** This lease is not subject to conflict application as provided in I.C. § 58-310A.

STATE OF IDAHO
DEPARTMENT OF LANDS
Cottage / Residence Site Lease

HARDSHIP CLAIMS

A. Objective:

To grant a lessee with an undue financial hardship an opportunity to defer rental increases to allow sufficient time to arrange for sale and assignment of the lease.

B. Eligibility:

Any lessee forced to sell due to escalating rental could ask for deferment of any increase in rental for a period of up to two years. Payment of deferred rent shall be due upon sale and assignment of the leasehold interest or at the expiration of the authorized deferment. The deferred rent will be subject to interest at the board rate.

C. Application:

1. The lessee must submit a letter of request including a sworn financial statement. The department may request additional information as needed.
2. Hardship claims must be submitted no later than October 1 of each year.

D. Deferment of Rent:

1. The Department of Lands (Department) is hereby authorized to extend the time of payment of such moneys for said leases annually not to exceed two (2) successive years; provided, that the applicant enters into an agreement with the Department to pay the interest on said amount of rent money from January first of the year which the same is otherwise due, to the date of payment, at the rate per annum set by the State Board of Land Commissioners (Idaho Code §58-305).
2. Authorization of the hardship claim will be agreed to in writing by means of an adjustment to the lease using the Department lease adjustment form.
3. Interest on the deferred amount will be charged at the rate as established by the State Board of Land Commissioners. The current rate is the average monthly rate for conventional mortgages as quoted in the federal review statistical releases. The rate is rounded down to the nearest one-quarter percent on the tenth of the month following the statistical releases.
4. Deferment would be on any increase in excess of the current year's rental.
5. Full payment of the deferred rent is required at the time of a lease assignment or at the expiration of the granted deferred time frame.

E. Additional extensions may be considered by the Department on a case by case basis.

STATE OF IDAHO
DEPARTMENT OF LANDS
Cottage / Residence Site Lease

LOT VALUATION APPEAL PROCEDURE

This procedure involves three steps:

- 1.) The Department will do a lot valuation at Priest Lake
- 2.) If the valuation is not acceptable to the Lessee, the Lessee and the Department will meet to review the circumstances and try to resolve the differences in lot valuation.
- 3.) If the differences in lot valuation cannot be resolved, then the Director will appoint a three (3) person panel to make recommendations directly to the State Land Board. The Director will appoint one (1) person to the panel from a list of three (3) names provided by the Lessee.

The three (3) person panel will conduct hearings and give the parties opportunities to make appropriate records in case further appeals are made.

The Department will rely on Valley County assessed values at Payette Lake. The procedure noted in one through three above will be used to resolve differences in valuations.

